

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEVON FRYE,	:	CIVIL ACTION NO. 1:16-CV-780
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
SGT. NATHANIEL WILT, <i>et al.</i>,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 22nd day of November, 2016, upon consideration of the report (Doc. 10) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant in part and deny in part defendants' motion (Doc. 7) to dismiss under Federal Rule of Civil Procedure 12(b)(6), wherein Judge Carlson observes that plaintiff Devon Frye ("Frye") concedes that his Fourteenth Amendment and "reckless disregard for safety" claims would not survive a motion to dismiss, (Doc. 10 at 2), but otherwise opines that Frye's complaint survives Rule 12(b)(6) scrutiny, (id. at 7-16), and it appearing that defendants did not object to the report, see FED. R. CIV. P. 72(b)(2), and the court noting that failure of a party to timely object to a magistrate judge's conclusions "may result in forfeiture of *de novo* review at the district court level," Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (citing Henderson v. Carlson, 812 F.2d 874, 878-79 (3d Cir. 1987)), but that, as a matter of good practice, a district court should "afford some level of review to dispositive legal issues raised by the report," Henderson, 812 F.2d at 878; see also Taylor v. Comm'r

of Soc. Sec., 83 F. Supp. 3d 625, 626 (M.D. Pa. 2015) (citing Univac Dental Co. v. Dentsply Int'l, Inc., 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010)), in order to “satisfy itself that there is no clear error on the face of the record,” FED. R. CIV. P. 72(b), advisory committee notes, and, following an independent review of the record, the court in agreement with Judge Carlson’s recommendation, and concluding that there is no clear error on the face of the record, it is hereby ORDERED that:

1. The report (Doc. 10) of Chief Magistrate Judge Carlson is ADOPTED.
2. Defendants’ motion (Doc. 7) to dismiss is GRANTED to the extent it seeks dismissal of Frye’s Fourteenth Amendment and “reckless disregard for safety” claims. The motion (Doc. 7) is DENIED in all other respects.
3. This matter is REMANDED to Chief Magistrate Judge Carlson for further pretrial management.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania